

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

**Service Rules for Advanced Wireless
Services in the 2155-2175 MHz Band**

To: The Commission

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WT Docket No. 07-195

**JOINT REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION
AND
UNITED STATES CELLULAR CORPORATION**

TDS Telecommunications Corporation ("TDS Telecom") and United States Cellular Corporation ("USCC") on behalf of themselves and their subsidiaries (collectively "Joint Commenters"), by their attorneys, submit their reply comments in response to comments filed in response to the Commission's Notice of Proposed Rulemaking (FCC 07-164) released September 19, 2007 ("NPRM") addressing service rules for licensed fixed and mobile services, including Advanced Wireless Services ("AWS"), in the 2155-2175 MHz ("AWS-3") band.

Introduction

The comments reflect widespread support for Commission action promoting the effective and efficient use of the spectrum in the AWS-3 band but do not indicate any clear consensus on band plan, service area size, interference or suitable technology options. A compromise of the diverse proposals before the Commission in these proceedings will be necessary. We believe that within some limits the Commission should consider a building block approach which inevitably will require the Commission to reject the self-interested proposals of M2Z and other potential applicants.

We suggest that the Commission license this spectrum as a 20 MHz block in smaller market sizes, ideally Metropolitan Statistical Area/Rural Service Area ("CMA") market sizes which will promote competitive entry and economic opportunity for the widest variety of applicants. We also support the adoption of flexible "substantial service" renewal and build out requirements to promote timely and cost-efficient deployment in rural and underserved areas. We strongly oppose the adoption of Regional Economic Area Grouping ("REAG") or nationwide licensing for any of this spectrum and the use of package bidding procedures in licensee selection. We also oppose the adoption of the specific proposals of M2Z Network and others to govern operations within this band.

Before discussing specific topics on which the Commission requested comment in this proceeding, we also address matters which the Commission is considering in other proceedings which MetroPCS and Wireless Communications Association International ("WCA") have asked that the Commission also consider in this proceeding.

With respect to the Commission's pending service rules proceedings in WT Docket Nos. 04-356 and 02-353, we agree with MetroPCS that the interference issues involving the AWS-3 band and adjacent AWS-2 spectrum should be resolved together.¹ We strongly support the timely concurrent resolution of the Commission's J-Block proceedings so that this spectrum can be available at an early date for the continued development and operation of competitive wireless networks and the expansion of wireless services in rural and underserved areas. See also comments and reply comments filed by USCC in WT Docket Nos. 04-356 and 02-353 which are hereby adopted by reference.²

¹ MetroPCS Comments, p. 7.

² See Comments and Reply Comments of USCC dated December 8, 2004 and January 7, 2005, respectively, in WT Docket Nos. 04-356 and 02-353.

In response to WCA's Comments³ in support of its pending Petition for Reconsideration in ET Docket No. 00-258, we note that we have previously opposed grant of that Petition which relates to the BRS relocation rules adopted in the Commission's Ninth Report and Order in ET Docket No 00-258. We object to WCA's attempt to raise these same matters in this proceeding. Rather than repeat our detailed opposition, we adopt by reference our "Opposition of United States Cellular Corporation" dated August 3, 2006 in which we described how the Commission's Ninth Report and Order reasonably addresses the needs of incumbent BRS Channel 1 and 2 licensees for interference protection in a careful and balanced decision and is supported by a substantial and compelling record. We also requested that the Commission deny WCA's proposed revisions to Section 27.1132 of the Commission's rules.

Discussion

1. The Commission Should Adopt Service Area License Sizes for AWS-3 Spectrum Which Preserve Licensing Opportunities for a Variety of Applicants.

We continue to support adoption of an AWS-3 band plan and service areas sizes that provide meaningful opportunities for local, rural and regional businesses to acquire the spectrum resources they need to compete with providers proposing to implement national or near national business plans.

We agree with the WCA that auctioning off a single 20 MHz spectrum block in each service area has advantages in terms of the flexibility, capacity, range of services and adaptability to emerging data rate requirements.⁴ This spectrum should not be subdivided. As we discuss separately in connection with the Commission's choice of auction methodologies, we strongly oppose adoption of novel and complex auction procedures which would be required to

³ WCA Comments, pp. 19-23.

⁴ WCA Comments, p. 5.

make possible the aggregation of smaller spectrum blocks to win as much as 20 MHz in a single service area.

We propose that AWS-3 spectrum be licensed on a CMA basis. We agree with MetroPCS that smaller service area sizes are appropriate to permit a variety of providers to construct networks and implement business plans which are the best fit for those providers.⁵ We also agree with MetroPCS that adoption of smaller service area sizes to use as a "building block approach"⁶ is mandated under the Commission's statutory obligations in Section 309(j)(3) of the Communications Act to ensure "an equitable distribution of licenses and services among geographic areas" and "avoid excessive concentration of licenses . . . by disseminating licenses among a wide variety of applicants. . ."

2. The Commission Should Deny Requests to Adopt Regional Economic Area Grouping or Nationwide Licensing for any AWS-3 Spectrum.

We strongly oppose adoption of REAG service areas as proposed by Sprint Nextel and nationwide licensing as proposed by M2Z Networks.

Regional or nationwide licensing is not necessary for incumbent national firms who intend to use this new spectrum to supplement their capacity to offer AWS services in certain regions or to offer localized versions of such services. Larger carriers such as Sprint Nextel and others already have significant spectrum holdings in the BRS, AWS-1 and other bands which are suitable for advanced wireless uses to meet their national and super regional needs. If for any reason the spectrum holdings of any of these providers is inadequate in some part of their service areas, bidding individually for CMA licenses would be a spectrum efficient way to fill holes or to increase capacity in targeted areas.

⁵ MetroPCS Comments, p. 8.

⁶ MetroPCS Comments, p. 8.

We also oppose adoption of M2Z Networks proposal to limit licensing opportunities to nationwide licensing as transparently self-serving and anti-competitive. The recent reports of Frontline's departure from Auction 73/76 underscore the significant hurdle which any new company faces in attempting to implement a new national wireless network. On the other hand, we believe that the chances of expanding coverage and competition among broadband providers are good if local, rural and regional providers have realistic opportunities to acquire the AWS-3 spectrum they need to provide new broadband services.

3. The Commission Should Reject Package Bidding for AWS-3 Licensee Selection.

We support use of standard simultaneous multi-round bidding procedures without package bidding for AWS-3 licensee selection. We agree with the analysis of MetroPCS that " ... combinatorial bidding is skewed toward certain large prospective bidders, and would discourage participation of smaller or regional carriers." ⁷ As discussed in our comments, the Commission's proposed bidding procedures would impose a disproportionate burden on smaller and regional bidders to deal with the changes and complexity of the resulting bidding system thereby unfairly benefitting sophisticated large bidders with deep pockets. Use of standard SMR procedures is the proper way for the Commission to assure that its bidding procedures are fair, objective, open, and transparent.

4. The FCC Should Maintain Reasonable Renewal and Performance Requirements.

In our Comments, at pp. 5-10, Joint Commenters urged the FCC to maintain the reasonable license renewal and licensee performance standards embodied in the present AWS-1 rules.⁸ Given the uncertainty about the nature of the networks to be developed in this spectrum band, owing to complex interference constraints, the FCC should allow carriers maximum

⁷ MetroPCS Comments, p.9.

⁸ See Section 27.13(g), 27.14(a), and 27.14(g) of the FCC's Rules.

flexibility in its criteria for license renewal and licensee performance requirements. Such flexible criteria are now incorporated in the AWS-1 rules and should be adopted for the AWS-3 rules.

However, in our Comments we also noted and criticized the NPRM's mistaken license renewal proposals, which would increase the uncertainty and difficulty of the renewal process. We also opposed the adoption of new and onerous performance requirements as a replacement for the existing flexible "substantial service" standard.⁹

Interference and network design issues will have to be a central focus of licensees in this frequency band. Reflecting that, most of the comments filed in this docket focused on those technical issues. However, CTIA has also filed strong comments urging the FCC to adopt flexible licensing and operating rules.¹⁰

We share CTIA's opposition to strict geographic buildout requirements, which are inconsistent with existing AWS-1 requirements.¹¹ CTIA argues rightly that access to wireless networks has been extended to the great majority of the U.S. population a pace dictated by rational business judgment. As CTIA further states, unrealistic regulatory requirements can only produce uneconomic decision making and misallocation of resources. Moreover, as noted above, they may also result in failure by possible applicants to enter the market at all.¹² This flexible regulatory structure has worked for the cellular and PCS services and was adopted for

⁹ One of the sources of confusion in the FCC's proposals is its use of the phrase "substantial service" to describe both the existing flexible AWS licensee performance standard as well as a possible new evaluative criterion for license renewal which could incorporate ex post facto standards of review above and beyond any actual licensee performance requirements. Apart from the other reasons not to make this change in the rules, having the same phrase for two radically different requirements in Part 27 would be very ill advised.

¹⁰ See Comments of CTIA, filed December 14, 2007, pp. 11-21.

¹¹ CTIA Comments, pp. 17-21.

¹² See, e.g., "Frontline 'Closed For Business'; Demise Seen As Bad For New 700 MHz Auction Bidders," TR Daily, January 8, 2008.

AWS-1 licensees. There is no reason radically to alter that structure for AWS-3, which faces technical obstacles not faced by the older, more established services.

5. The FCC Should Not Impose A Particular Business Model on AWS-3 Spectrum.

In our Comments Joint Commenters opposed the previous proposals of M2Z Network and other parties referred to in the NPRM, which ask the FCC to adopt various conditions, drawn from their own business plans, to govern the operation of the AWS-3 band. Joint Commenters argued that the adoption of service rules which replicate any carrier's business plan will only encourage an endless proliferation of self interested spectrum proposals in the future. Adoption of such proposals in the form of FCC rules would have to be based on a guess about whether a particular business plan was the best one, and whether all others should be excluded. There is no rational way for the FCC to make such predictions. It is far more sensible to allow the free market to determine the best business plan or plans after a spectrum auction allocates the spectrum.

In its Comments, M2Z again proposes AWS-3 rules which would require a single nationwide 20 MHz license with a 15 year license term.¹³ A sufficient number of base stations would have to be constructed to serve 33 percent of the U.S. population within three years of license grant, 66 percent within five years, and 95 percent within 10 years. This would be 29 percent more coverage nationwide than the FCC now requires for any PCS MTA market. It would require an immense capital investment. The single licensee would have to provide an "Advanced Broadband Audio Service" at an "engineered data rate" of 384 kbps download and 128 kbps upload and provide service to retail customers "free of airtime or service charges." The licensee would also be required to serve "any public safety organization" at those data speeds, also presumably for free. Without regard to the First Amendment considerations which constrain

¹³ See Comments of M2Z Networks, Inc. Appendix A.

the FCC's ability to regulate indecent speech and the litigation which such restrictions usually generate,¹⁴ the AWS-3 licensee would be required to block "content it deem[ed] harmful to minors," and could only "disable" this blocking capability upon the provision of proof by customers that they had attained the age of majority.¹⁵

In addition to having to provide free retail service, the licensee would be allowed to provide "wholesale" service for profit, on "reasonable and non-discriminatory terms and conditions,"¹⁶ from which presumably its revenues would come. Eligibility for the license would be limited to entities holding less than 20 MHz of spectrum in at least 50 percent of the counties in the United States, a provision clearly intended to exclude from consideration the national wireless carriers.

This proposal has the central flaw previously identified by the Joint Commenters. It is clearly intended to benefit one applicant, M2Z, and implement its business plan. Moreover, M2Z's business plan is both overregulatory and unlikely to succeed. Also, having only one licensee would place all the FCC's regulatory "eggs" in one basket. If M2Z's plan failed, the spectrum could be rendered unusable for years to come, as the inevitable administrative and likely court litigation went forward. It would be far better for the FCC to license one licensee per market, but in many relatively small market areas, and allow those licensees to determine through their various business plans, the best approaches to service provision in this difficult, interference constrained spectrum band.

CTIA, in its comments, also notes that the FCC should not require AWS-3 licensees to meet specific conditions, such as pricing plans, minimum data rates, "content filtering" or "open

¹⁴ See, Sable Communications of California, Inc. v. FCC, 492 U.S. 115 (1990).

¹⁵ M2Z Comments, Appendix A.

¹⁶ Ibid.

platform" rules, such as have been applied to the upper 700 MHz C Block.¹⁷ We agree with CTIA that for the Commission to embrace this type of micromanagement of carrier business plans would be contrary to the spirit of free market competition which has guided the FCC's wise regulation of America's flourishing wireless network.

Conclusion

We believe that the Commission has the best chance of effectively promoting competition and new entry for the provision of advanced broadband services by assuring that suitable licensing opportunities in the AWS-3 band are provided to accommodate the business plans of companies large and small. The 20 MHz block size we support, in combination with smaller service area sizes, provides flexibility, capacity, range of services and enhanced technology options to meet the needs of incumbent providers and prospective new entrants. REAG and nationwide service area sizes are only affordable and suitable for the largest firms and should be rejected for this reason. We also support use of standard SMR bidding procedures without package bidding to assure that smaller bidders do not bear a disproportionate burden with respect to the risks and complexity of the resulting bidding system. We also support reasonable and flexible license renewal and licensee performance standards, and ask the Commission to reject the self-interested proposals of M2Z and other potential applicants.

¹⁷ Ibid., pp. 13-17.

Respectfully submitted,

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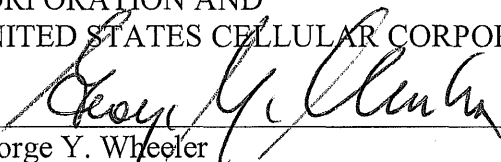
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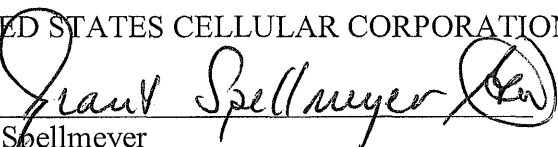
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January 14, 2008

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